Appendix 2

15. Regulated entertainment

TYPES OF REGULATED ENTERTAINMENT

15.1 Subject to the conditions, definitions and the exemptions referred to in Schedule 1, the types of entertainment regulated by the 2003 Act are:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment (whether indoor or outdoor);
- a performance of live music (but note the changes brought in by the Live Music Act 2012 ("the 2012 Act"), see paragraph 15.10 below);
- any playing of recorded music;
- a performance of dance;
- entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.

15.2 However, these types of entertainment are only regulated where the entertainment takes place in the presence of an audience and is provided, at least partly, to entertain that audience.

ACTIVITIES THAT DO NOT CONSTITUTE "REGULATED ENTERTAINMENT"

15.3 Licensing authorities should consider whether an activity constitutes the provision of regulated entertainment, taking into account the conditions, definitions and exemptions set out in Schedule 1 to the 2003 Act. This Guidance cannot give examples of every eventuality or possible activity. The following activities, for example, are not regulated entertainment:

- education – teaching students to perform music or to dance;
- activities which involve participation as acts of worship in a religious context;
- activities that take place in places of public religious worship;
- the demonstration of a product – for example, a guitar – in a music shop; or
- the rehearsal of a play or performance of music for a private audience where no charge is made with a view to making a profit (including raising money for charity).

15.4 Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable – must comply with any applicable duties that may be imposed by other legislation (e.g. crime and disorder, fire, health and safety, noise, nuisance and planning).

ENTERTAINMENT FACILITIES

15.5 As a result of changes to the 2003 Act made by the 2012 Act, 'entertainment facilities' are no longer licensable. Conditions on a licence that relate solely to entertainment facilities may no longer apply, but note paragraphs 15.18 and 15.19 below.

PRIVATE EVENTS

15.6 Events that are held in private are not licensable unless those attending are charged for the entertainment with a view to making a profit (including raising money for charity). For example, a party held in a private dwelling for friends featuring amplified live music, where a charge or contribution is made solely to cover the costs of the entertainment would not be regulated entertainment. Similarly, any charge made to the organiser of a private event by musicians, other performers, or their agents does not of itself make that entertainment licensable – it would only do so if the guests attending were themselves charged by the organiser for that entertainment with a view to achieving a profit. The fact that this might inadvertently result in the organiser making a profit would be irrelevant, as long as there had not been an intention to make a profit.

15.7 Schedule 1 to the 2003 Act also makes it clear that before entertainment is regarded as being provided for consideration, a charge has to be:

- made by or on behalf of a person concerned with the organisation or management of the entertainment; and
- paid by or on behalf of some or all of the persons for whom the entertainment is provided.

PUB GAMES

15.8 Games commonly played in pubs and social and youth clubs (such as pool, darts, table tennis and billiards) would only be licensable activities if hosted in the presence of a public audience, to entertain, at least in part, that audience. For example, a darts championship competition is often licensable and could be a licensable activity, but a game of darts played for the enjoyment of the participants is not usually licensable.

STAND UP COMEDY

15.9 Stand-up comedy is not regulated entertainment, and music that is incidental to the main performance would not make it a licensable activity. Licensing authorities should encourage operators to seek their advice, particularly with regard to their policy on enforcement.

LIVE MUSIC

15.10 To encourage more performances of live music, the 2012 Act has amended the 2003 Act by deregulating aspects of the performance of live music so that, in certain circumstances, it is not a licensable activity. However, live music remains licensable:

- where a performance of live music – whether amplified or unamplified – takes place other than between 08:00 and 23:00 on any day;
- where a performance of amplified live music does not take place either on relevant licensed premises, or at a workplace that is not licensed other than for the provision of late night refreshment;
- where a performance of amplified live music takes place at relevant licensed premises, at a time when those premises are not open for the purposes of being used for the supply of alcohol for consumption on the premises;

- where a performance of amplified live music takes place at relevant licensed premises, or workplaces, in the presence of an audience of more than 200 people; or
- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act (as amended by the 2012 Act) when imposing a condition on a premises licence or certificate as a result of a licence review (see paragraphs 15.23-15.24 below).

15.11 In any of the above circumstances, unless the performance of live music is appropriately authorised by a premises licence, club premises certificate or Temporary Event Notice, allowing it to continue could lead to enforcement action and a review of the alcohol licence or certificate.

KEY TERMS USED IN THE LIVE MUSIC ACT 2012

15.12 Under the 'live music' provisions, 'music' includes vocal or instrumental music or any combination of the two". 'Live music' is a performance of live music in the presence of an audience which it is intended to entertain. While a performance of live music can include the playing of some recorded music, 'live' music requires that the performance does not consist entirely of the playing of recorded music without any additional (substantial and continual) creative contribution being made. So, for example, a drum machine or backing track being used to accompany a vocalist or a band would be part of the performance of amplified live music. A DJ who is merely playing tracks would not be a performance of live music, but might if he or she was performing a set which largely consisted of mixing recorded music to create new sounds. There will inevitably be a degree of judgement as to whether a performance is live music or not and organisers of events should be encouraged to check with their licensing authority if in doubt. In the event of a dispute about whether a performance is live music or not, it will ultimately be for the courts to decide in the individual circumstances of any case.

15.13 A "workplace" is as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and is anywhere that is made available to any person as a place of work. It is a very wide term which can include outdoor spaces, as well as the means of entry and exit.

15.14 "Audience" – an activity is licensable as regulated entertainment if it falls within one or more of the descriptions of entertainment in paragraph 2 of Schedule 1 to the 2003 Act and takes place in the presence of an audience for whose entertainment (at least in part) it is provided. An audience member need not be, or want to be, entertained: what matters is that an audience is present and that the purpose of the licensable activity is (at least in part) intended to entertain any person present. People may be part of an audience even if they are not located in exactly the same place as the performers, provided they are present within the audible range of the performance. So, for example, if a band is performing in a marquee, people dancing outside that marquee may nevertheless be members of the audience. The audience will not include performers, together with any person who contributes technical skills in substantial support of a performer (for example, a sound engineer or stage technician), during any activities associated with that performance. These activities include setting up before the performance, reasonable breaks (including intervals) between songs and packing up thereafter. Similarly, security staff and bar workers will not form part of the audience while undertaking their duties, which includes reasonable breaks.

15.15 For the purposes of this Chapter only, "relevant licensed premises" refers to premises which are authorised to supply alcohol for consumption on the premises by a premises licence or club premises certificate. Premises cannot benefit from the deregulation introduced by the 2012 Act by virtue of holding an authorisation for the sale of alcohol under a Temporary Event Notice.

15.16 Public performance of live unamplified music that takes place between 08:00 and 23:00 on any day no longer requires a licence in any location. An exception to this is where a specific condition related to live music is included following a review of the premises licence or certificate in respect of relevant licensed premises.

15.17 This amendment to the 2003 Act by the 2012 Act means that section 177 of the 2003 Act now only applies to performances of dance.

LIVE MUSIC – CONDITIONS AND REVIEWS

15.18 Any existing licence conditions on relevant licensed premises (or conditions added on a determination of a licence application) which relate to live music remain in place but are suspended between the hours of 08:00 and 23:00 on the same day.

15.19 In some instances it will be obvious that a condition relates to live music and will be suspended, for example "during live music all doors and windows must remain closed". In other instances, it might not be so obvious, for example, a condition stating "during Regulated Entertainment all doors and windows must remain closed" would not apply if the only entertainment provided was live music between 08:00 and 23:00 on the same day to an audience of up to 200, but if there was a disco in an adjoining room then the condition would still apply to the room in which the disco was being held.

15.20 However, even where the 2003 Act (as amended by the 2012 Act) has deregulated aspects of the performance of live music, it remains possible to apply for a review of a premises licence or club premises certificate if there are appropriate grounds to do so. On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension and give renewed effect to an existing condition relating to live music. Similarly, by section 177A(4), a licensing authority may add a condition relating to live music as if live music were regulated entertainment, and as if that licence or certificate licensed the live music.

15.21 An application for a review in relation to premises can be made by a licensing authority, any responsible authority or any other person. Applications for review must still be relevant to one or more of the licensing objectives and meet a number of further requirements: see Chapter 11 of this guidance for more information about reviews under the 2003 Act.

15.22 More general licensing conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g. signage asking patrons to leave quietly) will remain in place.

APPLYING CONDITIONS TO NON-LICENSABLE ACTIVITIES

15.23 If appropriate for the promotion of the licensing objectives, and there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that licence or certificate at review following problems occurring at the premises. This has been a feature of licence conditions since the 2003 Act came into force. A relevant example could be the use of conditions relating to large screen broadcasts of certain sporting events which, combined with alcohol consumption, create a genuine risk to the promotion of the licensing objectives. It is also not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as unlicensed beer gardens, after a certain time.

15.24 Similarly, while karaoke no longer needs licensing as the provision of entertainment facilities (and will generally be live music – see paragraph 15.12 above) it might, for example, be possible on review to limit the use or volume of a microphone made available for customers, if a problem had occurred because of customers purchasing alcohol for consumption on the premises becoming louder and less aware of causing noise nuisance later in the evening. Another example might be a condition restricting access to a dance floor, where the presence of customers who had been consuming alcohol on the premises had led to serious disorder.

MORE THAN ONE EVENT IN THE SAME PREMISES

15.25 The amendments to the 2003 Act made by the 2012 Act do not prevent more than one performance of amplified live music being held concurrently at relevant licensed premises or a workplace, provided that the audience for each such performance is 200 or less. In some circumstances, there will be a clear distinction between performances, for example in separate rooms or on separate floors. However, any person involved in organising or holding these activities must ensure that audiences do not grow or migrate so that more than 200 people are in the audience for any one performance at any time. If uncertain, it might be easier and more flexible to secure an appropriate authorisation for a larger event.

BEER GARDENS

15.26 Beer gardens are often included on a premises licence. Where a beer garden does not form part of licensed premises and so is not included in plans attached to a premises licence or club premises certificate, it is nevertheless very likely that it will be a workplace. Paragraph 12B of Schedule 1 to the 2003 Act, says that a performance of live music in a workplace that does not have a licence (except to provide late night refreshment) is not regulated entertainment if it takes place between 08:00 and 23:00 on the same day in front of an audience of no more than 200 people.

15.27 However, a licensing authority may, in appropriate circumstances, impose a condition on a licence or certificate that relates to the performance of live music in an unlicensed beer garden using any associated licence or certificate. Provided such a condition is lawfully imposed, it takes effect in accordance with its terms.

15.28 Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided that the beer garden is included in the licence applying to the relevant licensed premises, and the performance takes place between 08:00 and 23:00 on the same day before an audience of 200 or fewer people. Unamplified music that takes place in a beer garden between 08:00 and 23:00 is exempt from licensing requirements, whether or not the beer garden is part of the premises licence.

MORRIS DANCING

15.29 The amendments to the 2003 Act by the 2012 Act extend the exemption relating to music accompanying Morris dancing in paragraph 11 of Schedule 1 to the 2003 Act, so that it applies to the playing of live or recorded music as an integral part of a performance of Morris dancing, or similar activity.

INCIDENTAL MUSIC

15.30 In addition to provisions introduced by the 2012 Act, the performance of live music and playing of recorded music is not regulated entertainment under the 2003 Act to the extent that it is "incidental" to another activity which is not itself one of the entertainments described in paragraph 2(1) of Schedule 1 to the 2003 Act.

15.31 Whether or not music is "incidental" to another activity will depend on the facts of each case. In considering whether or not music is incidental, one relevant factor will be whether or not, against a background of the other activities already taking place, the addition of music will create the potential to undermine the promotion of one or more of the four licensing objectives of the 2003 Act. Other factors might include some or all of the following:

- Is the music the main, or one of the main, reasons for people attending the premises?
- Is the music advertised as the main attraction?
- Does the volume of the music disrupt or predominate over other activities, or could it be described as 'background' music?

15.32 Conversely, factors which would not normally be relevant in themselves include:

- The number of musicians, e.g. an orchestra providing incidental music at a large exhibition.
- Whether musicians are paid.
- Whether the performance is pre-arranged.
- Whether a charge is made for admission to the premises.

SPONTANEOUS MUSIC, SINGING AND DANCING

15.33 The spontaneous performance of music, singing or dancing does not amount to the provision of regulated entertainment and is not a licensable activity because the premises at which these spontaneous activities occur would not have been made available to those taking part for that purpose.